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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT  
 OPPORTUNITY COMMISSION,

Plaintiff,

vs.

TESLA, INC.

Defendant.

Case No.: 3:23-cv-04984-JSC

**JOINT STIPULATION AND PROPOSED  
 ORDER REGARDING A PROTOCOL TO  
 LIMIT DISCOVERY FOR  
 POTENTIALLY AGGRIEVED  
 INDIVIDUALS**

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1 Pursuant to Pretrial Order No. 2, (ECF 65), Plaintiff U.S. Equal Employment Opportunity  
2 Commission (EEOC) and Defendant Tesla, Inc. (Tesla), (collectively, the parties), hereby submit the  
3 following Joint Stipulation and Proposed Order Regarding a Protocol to Limit Discovery for  
4 Potentially Aggrieved Individuals.

5 The parties' proposal seeks to reduce some of the expected discovery burdens regarding  
6 discovery into the potentially aggrieved individuals. The parties also see benefits in a mechanism for  
7 the mutual, rolling exchange of certain documents and information. While the parties seek to manage  
8 the discovery volume in this initial stage, they reserve the right to develop their claims and defenses  
9 and to articulate to the Court how the next phase of discovery and the case should proceed. *See* ECF  
10 63, p. 8 ". . . [A]the end of the Initial Fact Discovery Period, [the parties] will have a better  
11 understanding of our respective claims and defenses, and be better positioned to brief the Court on  
12 our proposal(s) for completing fact and expert discovery and resolving any subjects that may aid the  
13 Court in narrowing issues and managing the case through trial, such as the appropriateness of  
14 bifurcation, the timing of dispositive motions, models of proof."

15 In proposing these discovery limitations, the parties do not limit, waive, or prejudice either  
16 party's right to seek additional information during the Initial Fact Discovery period or at any point  
17 prior to close of discovery. For example, the protocol will not restrict the parties' ability to pursue  
18 other information and communications concerning complaints or evidence of racial harassment or  
19 retaliation and Tesla's responses to them. Nor shall this protocol limit the objections and defenses  
20 otherwise available to the parties in discovery. The parties further do not waive the right to select,  
21 propose, or stipulate to other discovery methods during this Initial Fact Discovery periods or in  
22 subsequent phases of the case. Lastly, the information exchanged through this protocol does not bind  
23 either party to a particular theory, model of proof, or defense, and does not limit either party to only  
24 using evidence relating to the PAIs (as defined below).

25 The parties are still negotiating their proposed Supplemental ESI Protocol which will also  
26 apply to productions of records pursuant to this stipulation.  
27  
28

1                   **1.     Proposed Protocol**

2                           **(a)     Scope of Potentially Aggrieved Individuals Subject to Discovery:**

3                   During the Initial Fact Discovery Period, the parties will limit the direct discovery on the  
4 potentially aggrieved individuals (PAIs), hereinafter defined as Black current and former Tesla  
5 employees employed since May 29, 2015, at Tesla's Fremont, California factory (ECF 1 p. 1-2), to a  
6 subset of those who have specifically sought advice or assistance from the EEOC in connection with  
7 this lawsuit to date. At present, EEOC has identified to Tesla roughly 1,100 such individuals (PAIs).  
8 The EEOC anticipates that additional individuals will seek the Commission's advice or assistance  
9 during discovery, particularly after EEOC receives a more complete class list from Tesla. The EEOC  
10 agrees to regularly and timely update Tesla regarding the existence of additional PAIs. During the  
11 Initial Fact Discovery Period the parties will not seek records from PAIs except as provided in this  
12 protocol, absent a stipulation or court order.

13                           **(b)     Selection Criteria:**

14                   Each party will select 50 PAIs (100 total) for whom they will each make stipulated  
15 disclosures during the Initial Fact Discovery Period. The parties are limited to 10 total depositions  
16 during the Initial Fact Discovery Period. *See* ECF 63 p. 9.

17                           **(c)     Disclosures:**

18                   For each PAI selected during the Initial Fact Discovery Period, parties will produce the  
19 following records and information concerning them:

20                                   **(1)     From Tesla:**

21   (i)     Available employee data (e.g., complete "personnel"  
22 records and data, performance evaluations, disciplinary records, termination records, job  
23 descriptions, etc.), regardless of how such data is maintained;

24   (ii)    Non-privileged complaint/investigation records and all  
25 related non-privileged correspondence and documentation, if any, concerning allegations of  
26 mistreatment based on race, or retaliation;

27   (iii)   Available records reflecting the identities of the PAI's  
28 leads, supervisors and managers, and assigned HR staff, and records reflecting the departments they

1 worked in, and,

2 (iv) Any other document(s) in Tesla's possession upon  
3 which it may rely to support its defenses concerning any allegations of harassment or retaliation  
4 from the PAI, including but not limited to any relevant declarations produced in or depositions taken  
5 in the *CRD* and *Vaughn* cases.

6 (2) From the EEOC

7 (i) Any non-privileged EEOC records and communications  
8 concerning the selected PAI's allegations of harassment or retaliation to the extent not already  
9 produced in the litigation;

10 (ii) Available diary, journal, calendar entries, and non-  
11 privileged communications maintained by the PAI concerning the factual allegations or claims at  
12 issue in this lawsuit;

13 (iii) Available documentation regarding any complaints  
14 submitted by the PAI to Tesla; and

15 (iv) Any other available document(s) in the PAI's  
16 possession upon which the EEOC may rely to support its claims.

17 (3) The EEOC intends to seek items #2(ii)-2(iv) directly from the  
18 selected PAIs.

19 The parties do not agree as to the procedure to be followed if the Commission is unable to  
20 obtain this information from the PAIs within the specified deadline. Tesla's position is that the  
21 Commission should agree not to oppose Tesla's right to subpoena information in the above-listed  
22 categories directly from the PAIs, which is the most efficient and comprehensive method of  
23 document collection. The Commission's position is that if either party cannot comply with the  
24 Protocol, they should meet and confer and, if necessary, seek appropriate guidance or relief from the  
25 Court.

26 (d) **Timing of Selections and Disclosures:**

27 The selections will occur on a rolling basis beginning December 1, 2024, or the first Monday  
28 following Court approval of this Protocol, whichever is later. Thereafter, each party may select up to

10 PAIs at a time every 90 days with the disclosures due every 90 days after the selection. The parties reserve the right to conduct discovery regarding PAIs in further phases of discovery, up to the close of fact discovery.

(e) **Changes or Modifications to the Protocol:**

The parties will meet and confer about the proposed protocol, as may be warranted, after they assess the efficacy of this protocol, and particularly after additional potentially aggrieved individuals are identified. Neither party shall be prejudiced from seeking a modification of these limitations by stipulation or Court order at any time.

Dated: October 30, 2024

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**LOCAL RULE 5-1(i)(3) ATTESTATION**

I, James H. Baker, am the ECF User whose ID and password are being used to file the Joint Case Management Conference Statement. In compliance with Local Rule 5-1(i)(3), I hereby attest that Tyree P. Jones concurs in this filing.

Dated: October 30, 2024

/s/ James H. Baker

James H. Baker, Senior Trial Attorney

**[PROPOSED] ORDER**

The parties' Joint Stipulation Regarding a Protocol to Limit Discovery for Potentially Aggrieved Individuals is hereby ordered as stipulated.

DATED: \_\_\_\_\_

\_\_\_\_\_  
JACQUELINE SCOTT CORLEY  
United States District Judge